

# Issue Brief

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## Revised Legislation to Prevent Government Shutdowns Should Also Preclude a CBO Scoring Glitch

### Introduction

The combination of divided government and deep policy divides has once again raised the specter of a government shutdown. Senator James Lankford (R-OK) re-introduced legislation that would put an end to this needless drama enabled by dysfunction in D.C. The [Prevent Government Shutdowns Act](#), which has bipartisan support, would provide for automatic continuing resolutions (CRs) based on previously enacted funding levels, in the event that lawmakers fail to fund the government. The current version has been slightly modified to avoid a scoring glitch in the cost estimate by the Congressional Budget Office (CBO) in 2019.

### Background

The Antideficiency Act (ADA) was enacted in 1884 to help protect Congress's power of the purse, preventing the executive branch from spending funds that have not been authorized pursuant to acts of law, or are in excess of lawful appropriations. Depending on the nature of the violations of the ADA, federal employees can face penalties varying from a warning, suspension without pay, or imprisonment and fines.

A side-effect of the ADA is that many government departments and agencies must shutter their operations and federal workers are

### Key Facts:



Senator Lankford and a bipartisan list of cosponsors introduced the Prevent Government Shutdowns Act of 2023.



When policy differences in Washington lead to a funding lapse, the legislation would ensure that federal agencies stay open via short-term rolling continuing resolutions at previous spending levels.



It would also prioritize consideration of appropriations and emergency legislation in Congress and curtail travel by Cabinet officials and Members of Congress except for travel to Washington.

furloughed if policy disagreements between the House, Senate, and White House result in a lapse in funding. When lawmakers fail to enact appropriations before current funding laws expire, a government shutdown occurs. There are exceptions for so-called “essential” operations of the federal government, including law enforcement, the Federal Aviation Administration, the Transportation Safety Administration, and the postal service. Benefits for Social Security and Medicare are still paid out. However, federal employees remain unpaid until the funding lapse is resolved, whether or not they are deemed “essential.”

Agencies are also prevented from accepting volunteer services. For example, the Government Accountability Office [notes](#) a violation during the government shutdown in Fiscal Year (FY) 2019 when a furloughed contractor uploaded a document to a database managed by the Agricultural Research Service. The ADA was violated because the agency accepted “voluntary services” from the contractor. In this instance, it was determined the law wasn’t willfully broken so the contractor was given a warning against working during a furlough.

## Reforming Budget Rules to Prevent Shutdowns

There have been government shutdowns in FYs 1996, 2014, 2018, and 2019. The longest funding gap occurred in 2019 leaving most governmental offices shut for 35 days. So that this doesn’t happen again, Sen. Lankford introduced S. 135, the Prevent Government Shutdowns Act of 2023. The Act would allow for basic governmental services to continue when politicians fail to enact appropriations in time.

The proposal has ten original cosponsors from across the aisle including Sens. Maggie Hassan (D-NH), Ron Johnson (R-WI), Angus King (I-ME), Mark Kelly (D-AZ), Steve Daines (R-MT), Kyrsten Sinema (D-AZ), Bill Cassidy (R-LA), Mike Braun (R-IN), and John Barasso (R-WY).

In the event of a lapse of funding across the federal government, the proposal would provide for spending to be carried over through an automatic CR based on the funding level provided in the previous year. The CR would be provided for rolling two-week periods. If no funding is approved after 14 days, appropriations and funds would be made available for an additional 14 days.

This is a change from the previous version of the bill which provided for open-ended appropriations at the previous levels until Congress enacts a law to end the funding gap. Despite the intention of the bill to merely continue funding at the pre-existing levels, CBO’s analysis made it look as though the bill would increase spending by nearly [\\$13 trillion over the decade](#).

That was not the intention of the bill, but rather resulted from arcane budget rules that CBO was required to use to score the bill. The modifications should help provide guidance for CBO to produce a more common sense score since the measure is to provide for a continuation of government services as a stopgap without increasing or decreasing spending levels.

The bill also establishes procedures in the House and Senate so that only appropriations and emergency legislation may be considered until the funding gap is resolved (it is expected that this provision would be modified going forward to give leadership greater discretion to move other necessary legislation). In addition, it would curtail travel by Cabinet officials and Members of Congress except for travel to Washington.

## Conclusion

Taxpayers deserve a functioning government. It is also unfair to government workers to be furloughed or forced to work without pay (in essence “volunteering” their services, which would otherwise be in violation of the ADA) because of a failure of Congress and the White House to finalize the budget in a timely manner. The Preventing Government Shutdowns Act would prevent the unnecessary costs and unintended consequences of funding lapses.



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